

REMARKS

The pending Office Action addresses and rejects claims 14-29.

Rejections Pursuant to 35 U.S.C. §102

The Examiner rejects claims 14-29 pursuant to 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2005/0085813 of Spitler. The Examiner argues that Spitler discloses “a method for implanting a spinal fixation element into at least one spinal anchor . . . having a feature that is considered bulbous (91) . . . wherein the access device has a slot in the sidewall configured to prevent the feature from passing through of [sic] the fixation element (see fig 8A).” Office Action dated May 30, 2007. Applicants respectfully disagree.

Independent claims 14 and 27 each recite a method that includes introducing or inserting a spinal fixation element having a feature into an access device having a slot configured to *prevent* the feature from passing therethrough. Spitler does not teach a spinal fixation element with a feature that is prevented from being passed through a slot in an access device. To the contrary, the feature (91) on the end of Spitler’s brace (90) is specifically designed to pass through the slot. As explained in paragraph 0041 of Spitler, after engaging feature 91 with a tool and bending the tool, the “bending forces brace end 91 out of cannula 41 (through opening 402 thereof) and through the prepared muscle opening and into opening 402 of cannula 42.” Thus, the feature is free to pass through the slot. Accordingly, independent claims 14 and 27, as well as claims 15-26 and 28-29 which depend therefrom, therefore distinguish over Spitler and represent allowable subject matter.

Conclusion

In view of the foregoing, Applicants respectfully request that the Examiner allow all pending claims.

Respectfully submitted,

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